

---

**TITLE 312 NATURAL RESOURCES COMMISSION**

---

**Economic Impact Statement**

LSA Document #13-528

**[IC 4-22-2.1-5](#) Statement Concerning Rules Affecting Small Businesses****Estimated Number of Small Businesses Subject to this Rule:**

110. The DNR believes that approximately 110 applications for the in-lieu fee option will be submitted by having this new option in [312 IAC 9.5-3-1](#).

**Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:**

\$480 per year (\$20 per hour multiplied by 24 hours) for a business that submits an application for the in-lieu fee option. This cost would incorporate compiling the information necessary to complete the application form and submit it to the DNR.

**Estimated Total Annual Economic Impact on Small Businesses to Comply:**

\$480 per year for administrative costs, but total economic costs cannot be determined. The costs for in-lieu fee are only required when mitigation is required for a permit applicant, and the applicant requests to use the in-lieu fee option to serve as mitigation for a project in which a permit is required under the Lakes Preservation Act ([IC 14-26-2](#)), Flood Control Act ([IC 14-28-1](#)), or Navigable Waterways Act ([IC 14-29-1](#)). The costs are dependent upon the type of habitat being mitigated (such as forested wetland), and the location in the state.

**Justification Statement of Requirement or Cost:**

Mitigation is required to offset unreasonably detrimental impacts to fish, wildlife, and botanical resources pursuant to [IC 14-28-1-22](#) and [312 IAC 10-2-39](#). Additionally, the Natural Resources Commission has an information bulletin for floodway habitat mitigation that sets forth specific requirements for mitigation for construction in a floodway. Instead of having to identify a mitigation location, prepare a mitigation plan, do mitigation on-site with the planting of trees or other vegetation, and conduct monitoring for several years, an applicant will have the option of paying a fee to the Indiana Natural Resources Foundation instead with these new rules. Identifying appropriate mitigation lands can be time consuming for applicants and involve significant staff time to evaluate the locations as well. Mitigation plans are typically very detailed and include lists of plants, including their size, location, and spacing when planted, and a monitoring plan to ensure that the plants grow as required in the mitigation plan. If an applicant can pay the fee required instead of submitting a detailed mitigation plan that includes finding land to do the mitigation, planting the trees and other vegetation, and multiple years of monitoring, an applicant will likely save time and effort.

The Indiana Department of Transportation (INDOT) has requested that the DNR provide this option for mitigation, especially for large highway projects that cross multiple counties. Paying an in-lieu fee will eliminate the need for INDOT to hire other companies to prepare a detailed mitigation plan as part of the permit application process. INDOT will also not be required to hire other companies to conduct the annual monitoring and any corrective actions.

This in-lieu fee option will be available to all DNR permit applicants and is likely to be used by companies that have projects that span multiple counties (such as pipelines) or have projects in counties that are urban where land for mitigation is hard to find, without having to find mitigation sites in each county.

**Regulatory Flexibility Analysis of Alternative Methods:**

- Explanation of Preliminary Determination:

An alternative can be to not require a floristic quality assessment by a permit applicant, but the Nature Conservancy, Hoosier Environmental Council, and Indiana Wildlife Federation have all expressed concerns publicly about this new program. In order for the Natural Resources Commission to approve these new rules and ensure that fish and wildlife habitat will not be lost through this mitigation option, it is necessary that the DNR have a standardized method of evaluating the quality of the habitat to assist with determining the fee required for this program.

The only effects on business are for those that need a permit from the DNR to do construction in a floodway or in a navigable waterway, or along the shoreline or in a public freshwater lake, and have to do mitigation to offset unreasonably detrimental impacts to fish, wildlife, and botanical resources. Not all permit applications require mitigation. This is a third option for mitigation; it is a new option of submitting payment through an application process instead of developing and completing the work in a mitigation plan or going through a mitigation bank. Mitigation plans can take more time and effort to complete and monitor for several years. A business or local government entity that applies for a permit will likely save time and could save some money over time. A typical mitigation plan can cost thousands of dollars and include obtaining an easement on other

property to complete the work and monitor it for three to 10 years, whereas the in-lieu fee option in [312 IAC 9.5-3-1](#) will require a one-time floristic quality assessment, completion of an application form, and submission of the required amount of money for the amount and quality of habitat impacted.

- Supporting Data, Studies or Analyses: There were no studies or analyses relied upon for this determination. The number of businesses that are expected to apply for this in-lieu fee option is 25% of the number of permit applicants in Fiscal Year 2013 (436).

*Posted: 03/19/2014 by Legislative Services Agency*

An [html](#) version of this document.